



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0463]

RIN 1625-AA00

Safety Zone; Tennessee River, Ohio River and Cumberland River; Paducah and Smithland; Kentucky

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Tennessee River, Ohio River, and Cumberland River. This action is necessary to provide for the safety of life on the navigable waters in between Paducah, Kentucky, and Smithland, KY, during the transit and installation of the new I-60 bridge crossing the Cumberland River near Smithland, KY. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 8:00 a.m. on September 12, 2022, through 8:00 a.m. on September 22, 2022. The temporary safety zone will be enforced from 8 a.m. on September 12, 2022, through 8 a.m. on September 22, 2022, unless canceled earlier by the Captain of the Port Sector Ohio Valley.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0463 in the search box and click "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Evan Dawson, U.S. Coast Guard Marine Safety Unit Paducah; telephone 270-442-1621 x 2113, email MSUPaducah-WWM@USCG.MIL.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
TNR	Tennessee River
OHR	Ohio River
CUMB	Cumberland River
MM	Mile Marker

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because because it is impracticable. We must establish this safety zone by September 12, 2022, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be contrary to the public interest because

immediate action is needed to respond to the potential safety hazards associated with a bridge movement.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70051 and 33 CFR 6.04-6. The COTP has determined that potential hazards associated with the transit and installation of a 710 foot span of replacement bridge for the Lucy Jefferson Bridge from Paducah Riverport Authority, on the Tennessee River (TNR) at Mile Marker (MM) 1.5, transiting up the Ohio River (OHR) from MM 935 to MM 923, in Smithland, KY, continuing on to the Cumberland River (CUMB) to MM 2.8, the bridges final destination will be a safety concern for anyone within a half mile radius of bridge, vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is in transit and being installed.

IV. Discussion of the Rule

The COTP is establishing a moving safety zone from 8 a.m. on September 12, 2022, through 8 a.m. on September 22, 2022, unless canceled earlier by the COTP. The safety zone would cover all navigable waters within one half-mile of the bridge during any point of its transit from Paducah, KY, to Smithland, KY and during the lifting evolution. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before and during the scheduled relocation and installation of the new bridge. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The new bridge will be in transit on the TNR and the OHR for approximately 12-24 hours, causing minimal disruption to vessel traffic. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 22-A about the enforcement time of the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction

and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves involves a safety zone that would prohibit entry within one half-mile of the new bridge site while transiting on the TNR, OHR, and while transiting and being lifted into a permanent position on the CUMB. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 -- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T08-0463 to read as follows:

§ 165.T08-0463 Safety Zone; Tennessee River, Ohio River and Cumberland River; Paducah and Smithland; Kentucky.

(a) Location. The safety zone will cover all navigable waters of the Tennessee River, Ohio River, and Cumberland River within one half mile of the new bridge, near Smithland, KY, span during transiting and lifting.

(b) Enforcement period. This section will be subject to enforcement from 8 a.m. on September 12, 2022, and will continue through 8 a.m. on September 22, 2022, unless canceled earlier by the Captain of the Port Sector Ohio Valley (COTP). If there is inclement weather or other disruptions the U.S. Coast Guard (USCG) will inform mariners of the change in enforcement period via Broadcast Notice to Mariners on VHF-FM channel 16 and on-scene notice.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry of vessels or persons into the zone during transit operations is prohibited unless specifically authorized by the COTP or designated representative. A *designated representative* is a commissioned, warrant, or petty officer of the U.S. Coast Guard

assigned to units under the operational control of USCG Sector Ohio Valley.

(2) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

Dated: September 6, 2022.

H. R. Mattern,

Captain, U.S. Coast Guard,

Captain of the Port Sector Ohio Valley.

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